

**MINUTES**

**NATIVE AMERICAN GRAVES PROTECTION AND  
REPATRIATION REVIEW COMMITTEE**

**TWENTY-SIXTH MEETING  
TELECONFERENCE**

**JULY 19, 2004  
2:00 P.M. E.D.S.T.**

Remote Locations (National Park Service offices):

Headquarters Office  
1201 Eye Street NW  
Washington, DC

Northeast Regional Office  
15 State Street  
Boston, MA

Southeast Regional Office  
100 Alabama Street, SW  
Atlanta, GA

Mississippi National River and  
Recreation Area  
111 East Kellogg Blvd  
St. Paul, MN

Intermountain Regional Office  
12795 West Alameda Parkway  
Denver, CO

Intermountain Regional Office  
2968 Rodeo Park Drive West  
Santa Fe, NM

Pacific West Regional Office  
111 Jackson Street  
Oakland, CA

Pacific West Regional Office  
909 First Avenue  
Seattle, WA

Alaska Regional Office  
Federal Building  
222 W. 7<sup>th</sup> Avenue  
Anchorage, AK

Pacific Island Support Office  
300 Ala Moana Boulevard  
Honolulu, HI

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## **Background**

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Per the Review Committee's charter –

“The duties of the Committee are solely advisory. Specifically, the Committee will be responsible for:

1. Monitoring and reviewing the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;
2. Reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, or the repatriation of such items, upon the request of any affected party;
3. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants, and Federal agencies or museums relating to the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, including convening the parties to the dispute, if deemed desirable;
4. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for disposition of such remains;
5. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;
6. Consulting with the Secretary [of the Interior] in the development of regulations to carry out Public Law 101-601;
7. Performing such other related functions as the Secretary [of the Interior] may assign to the Committee;
8. Making recommendations, if appropriate, regarding future care of human remains, funerary objects, sacred objects, and objects of cultural patrimony which are to be repatriated; and
9. Submitting an annual report to Congress on the progress and any barriers encountered in carrying out the Committee responsibilities during the year.”

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1994).

Per NAGPRA, Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's current charter, the Assistant Director, Cultural Resources Stewardship and Partnerships, National Park Service or, in the absence of the Assistant Director, a designee serves as the Designated Federal Officer (DFO), who oversees the activities of the Review Committee and with whom the National Park Service provides administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.cr.nps.gov/nagpra/> (click on “Review Committee”).

Notice of this Review Committee meeting was published in the Federal Register on July 18, 2002 (Vol. 67, No. 138, pages 47396-47397), and October 18, 2002 (Vol. 67, No. 202, page 64410).

## **The 26th Meeting of the Review Committee**

The 26th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Mr. Timothy McKeown at 2:00 p.m. e.d.s.t, Friday, July 19, 2004. The meeting was a teleconference with public access locations available in ten cities (see Minutes, page 2).

Review Committee members in attendance –

Ms. Rosita Worl, Interim Chair

Mr. Garrick Bailey

Mr. Willie Jones

Mr. Dan Monroe

Ms. Vera Metcalf

Mr. Lee Staples

Mr. Vincas Steponaitis

Designated Federal Officers in attendance –

Mr. Timothy McKeown, Program Officer, National NAGPRA Program

Ms. Myra Giesen (for Hopi Tribe/Aztec Ruins National Monument disputes), Bureau of Reclamation

National Park Service/Department of the Interior staff in attendance –

Mr. Randy Jones, Deputy Director, National Park Service

Ms. Jan Matthews, Associate Director, Cultural Resources, National Park Service

Mr. Patrick Tiller, Deputy Associate Director, Cultural Resources, National Park Service

Mr. John Robbins, Assistant Director, Cultural Resources & Manager, National NAGPRA Program, National Park Service

Ms. Mary Downs, Program Officer, National NAGPRA Program, National Park Service

Ms. Martha Graham, Program Officer, National NAGPRA Program, National Park Service

Ms. Paula Molloy, Program Officer, National NAGPRA Program, National Park Service

Ms. Karen Mudar, Program Officer, National NAGPRA Program, National Park Service

Ms. Cyndie Murdock, Program Officer, National NAGPRA Program, National Park Service

Ms. Carla Mattix, Office of the Solicitor, Department of the Interior

Ms. Lesa Hagel, Consultant (contract transcriptionist)

Persons in attendance during part or all of the meeting at the following remote locations (names and affiliations as provided at the meeting by attendees) –

### **Washington, DC**

Ms. Risa Arbolino, National Museum of Natural History, Smithsonian Institution

Ms. Emogene Bevitt, American Indian Liaison Office, National Park Service

Mr. Bill Billeck, National Museum of Natural History, Smithsonian Institution

Ms. Mary Carroll, Archeology & Ethnography Program, National Park Service

Mr. Eric Hollinger, National Museum of Natural History, Smithsonian Institution

Ms. Sherry Hutt, George Mason University

Ms. Carolyn Kinsey, Archeology & Ethnography Program, National Park Service

Ms. Bambi Kraus, National Association of Tribal Historic Preservation Officers

Ms. Dorothy Lippert, National Museum of Natural History, Smithsonian Institution

Ms. Carolyn McClellan, Bureau of Indian Affairs

Ms. Nell Murphy, American Museum of Natural History

Ms. Patricia Parker, American Indian Liaison Office, National Park Service

Mr. Robert Stearns, Office of the Chief Information Officer, National Park Service

### **Boston, MA**

Mr. Chuck Smythe, National Park Service

Atlanta, GA

Mr. J. Anthony Paredes, National Park Service  
Mr. Dan Schiedt, National Park Service  
Ms. Beth Wheeler, National Park Service

St. Paul, MN

Mr. Michael J. Evans, National Park Service

Denver, CO

Ms. Cyd Martin, National Park Service  
Ms. Jennifer Barton, Colorado Historical Society  
Ms. Jan Berstein  
Ms. Christine Landrum, National Park Service  
Mr. Dave Ruppert, National Park Service  
Ms. Josette Wander Koogh, Colorado Historical Society  
Ms. Karen Wilde Rogers, Colorado Commission of Indian Affairs

Santa Fe, NM

Mr. Ed Natay, National Park Service  
Mr. Terrence Morgart, Hopi Tribe  
Ms. Virginia Salazar-Halfmoon, National Park Service

Oakland, CA

Mr. Roger Kelly, National Park Service  
Ms. Holly Dunbar, National Park Service  
Mr. David Look, National Park Service  
Mr. Richard Hitchcock, Hearst Museum  
Ms. Sonia Tamez, U.S. Forest Service

Seattle, WA

Mr. Fred York, National Park Service

Anchorage, AK

Ms. Janet Cohen, National Park Service

Honolulu, HI

Ms. Melia Lane-Kamahele, National Park Service  
Ms. Malia Baron, Bishop Museum  
Ms. Geri Bell, Kaloko-Honokohau National Historic Park  
Mr. Lance Foster, Office of Hawaiian Affairs  
Mr. Greg Johnson, Franklin & Marshall College  
Mr. Guy Kaulukukui, Hui Malama I Na Kupuna O Hawai'i Nei  
Mr. Kunani Nihipali, Hui Malama I Na Kupuna O Hawai'i Nei  
Ms. Ho'oipo Pa, Ke Kia'i  
Ms. Jodi Yamamoto, Bishop Museum

**Introduction**

Mr. McKeown welcomed the Review Committee members, staff, and members of the public to the teleconference. Mr. McKeown then gave a brief overview of the responsibilities of the Review Committee under the Statute. Mr. James Hillaire (Talla Whues), Lummi Nation, gave the opening invocation. The Review Committee members introduced themselves. Mr. McKeown reported that sadly Ms. Rachel Craig recently passed away. Ms. Craig was a powerful force for the importance of Native tradition, served on the Review Committee from 1992 until 1997, and served as the Review Committee's first interim Chair.

### **Comments by NPS Deputy Director**

Mr. Randy Jones, NPS Deputy Director, welcomed the Review Committee members and expressed appreciation for their advice and guidance in the implementation of NAGPRA. Mr. Randy Jones stated that at the September meeting the Review Committee members would receive an update on the structural realignment within the NPS for implementing NAGPRA. Mr. Randy Jones emphasized the importance of addressing the current backlog and accomplishing repatriations as expeditiously as possible.

### **Comments by NPS Associate Director, Cultural Resources**

Ms. Janet Matthews, NPS Associate Director, Cultural Resources, thanked the Review Committee members for their leadership and willingness to serve. She extended her thanks to the many people across the nation who have worked to bring the NAGPRA program to its current level of implementation. Ms. Matthews shared some of her experience over the past 25 years leading up to her current appointment, including her service as Florida State Historic Preservation Officer. Ms. Matthews extended warm regards from NPS Director Fran Mainella and added that Director Mainella specifically charged Ms. Matthews with making NAGPRA a top priority.

Ms. Matthews summarized recent activities in NAGPRA implementation, including the appointment of Mr. Willie Jones, Mr. Lee Staples, and Mr. Vincas Steponaitis to the Review Committee on May 20, 2004; the delegation of Mr. McKeown as DFO for the Review Committee on June 28, 2004; coordination of the July 29, 2004 teleconference; and initiation of a two-year Intergovernmental Personnel Act (IPA) assignment for Dr. Sherry Hutt to serve as Team Leader for the National NAGPRA Program. Ms. Matthews stated she looked forward to the September meeting and the opportunity to meet with the Review Committee members.

### **Designation of an Interim Chair**

Mr. Bailey recommended that Ms. Worl be appointed interim Chair of the Review Committee and that she serve in that capacity for purposes of the July 19, 2004 teleconference and the September 17-18, 2004 meeting. Mr. Bailey stressed the importance of an experienced Review Committee member filling this role, and pointed out that Ms. Metcalf's position on the Review Committee will be discussed at the next meeting. Mr. Steponaitis expressed concern about appointing an interim Chair when the Review Committee members had yet to meet in person, and he asked about the possibility of the DFO fulfilling the duties of Chair until the Review Committee meets in September. Mr. Staples expressed a similar concern. Ms. Mattix explained that the Review Committee's Charter states that the Review Committee will designate a Chair, although FACA regulations allow the DFO to chair a meeting. Mr. Monroe and Mr. Bailey stressed the importance of having an interim Chair that is a seated Review Committee member. Ms. Worl emphasized the impact of having a Review Committee member serve as Chair in order to foster a positive public perception of the Review Committee. Ms. Worl stated she was willing to fulfill the duties of interim Chair.

The Review Committee members agreed unanimously to appoint Ms. Worl as interim Chair of the Review Committee. Mr. Steponaitis asked that Ms. Worl and Mr. McKeown keep the Review Committee members informed of meeting details, including the meeting agenda, and other significant decisions made by the Chair and DFO.

### **Dates and Locations of Upcoming Meetings**

Mr. McKeown stated that the Review Committee members had previously indicated availability for a meeting on September 17-18, 2004, in Washington, DC. The Review Committee members each confirmed their availability and agreed unanimously on those dates and location for the next Review Committee meeting. Mr. Willie Jones suggested that the Review Committee members have an opportunity to meet prior to the September meeting in order

to become acquainted and foster a closer working relationship. Mr. Bailey recommended that the Review Committee members complete a NAGPRA training session prior to the meeting. Mr. Randy Jones agreed with both Mr. Willie Jones and Mr. Bailey and offered to schedule a training session on September 16, 2004, immediately preceding the meeting.

Ms. Worl recommended that dates be established for the meeting following the September 2004 meeting. Mr. McKeown agreed to contact the Review Committee members and begin the process of determining potential dates. Mr. Bailey suggested that the Review Committee meet in Albuquerque, NM, in order to accommodate the Hopi Tribe in their appearance before the Review Committee regarding a potential dispute.

The Review Committee members were agreeable to holding future teleconference meetings in order to settle administrative details, with the understanding that all substantial topics would be reserved for full Review Committee meetings.

## **Discussion of Possible Items for Future Meetings**

### **Requests to Facilitate the Resolution of Disputes**

Mr. McKeown explained that three disputes previously filed by the Narragansett Tribe — concerning Peabody at Harvard, Peabody at Andover, and Brown University — were recently withdrawn from consideration. Currently, two disputes are awaiting consideration by the Review Committee, both involving the Hopi Tribe and Aztec Ruins National Monument.

Ms. Giesen, DFO for disputes involving the NPS, summarized the status of requests to facilitate the resolution of disputes involving the NPS.

Hopi Tribe and Aztec Ruins National Monument: In October 1998, the Hopi Tribe requested that the Review Committee evaluate and make findings regarding the NPS process for determining cultural affiliation of human remains and funerary objects at Aztec Ruins National Monument. In March 1999, the DFO and Review Committee Chair determined it would not be appropriate for the Review Committee to consider the Hopi Tribe's dispute because Aztec Ruins National Monument had completed repatriation in 1998, before the Hopi Tribe registered its dispute and claim. The Hopi Tribe requested that they be allowed to appeal the decision to the entire Review Committee, based on Section IV(D)(2) of the Review Committee's Dispute Procedures. In November 2003, DFO Giesen informed the Hopi Tribe that the next step in the appeal process was to schedule time on the agenda of a future Review Committee meeting to present new, relevant information to the entire Review Committee, at which time the Review Committee could determine if the issue would be heard as a dispute at a future meeting.

Hopi Tribe and Aztec Ruins National Monument: In December 2000, the Hopi Tribe proposed a dispute regarding Aztec Ruins National Monument's determination of cultural affiliation and subsequent transfer of custody of human remains and inadvertent discoveries at the park in 1995. Since the case involved actions covered under Section 3 of NAGPRA that are outside of the Review Committee's explicit responsibilities, Ms. Giesen informed the Hopi Tribe that they could bring the issue before the Review Committee but not officially as a dispute.

Hopi Tribe and Mesa Verde National Park: In September 1999, the Hopi Tribe requested that the Review Committee evaluate and make findings regarding the NPS process for determining cultural affiliation of human remains and funerary objects at Mesa Verde National Park. The request was made while the Review Committee was considering the Hopi Tribe's dispute with Chaco Culture National Historical Park. The Review Committee Chair and DFO postponed consideration of the Hopi Tribe and Mesa Verde National Park dispute until completion of the Review Committee's consideration of Chaco Culture National Historical Park and the National Park System Advisory Board's review of the NPS process for determining cultural affiliation. In May 2003, the NPS Director informed the Hopi Tribe that Chaco Culture National Historical Park, Aztec Ruins National Monument, and Mesa Verde National Park cultural affiliation determinations were supported by evidence and adhered to NAGPRA regulations. In June 2003, the Hopi Tribe renewed its request that the Review Committee consider the dispute, and in July 2003 requested that the Secretary of the Interior uphold the Review Committee's findings and recommendations in the Hopi Tribe's dispute with Chaco Culture National Historical Park. In October 2003, DFO



Giesen and Review Committee Chair Minthorn agreed that it was appropriate that the Review Committee consider the dispute at the November 2003 meeting. Before the Hopi Tribe was informed of this decision, the Assistant Secretary, Fish, Wildlife, and Parks wrote to the Hopi Tribe indicating agreement with the NPS Director on Chaco Culture National Historical Park, Aztec Ruins National Monument, and Mesa Verde National Park cultural affiliation determinations. The Assistant Secretary then wrote to DFO Giesen and asked that the Review Committee not hear this issue as a dispute.

Mr. Monroe asked for clarification of the roles of DFO Giesen and the NPS Assistant Secretary, Fish, Wildlife and Parks, which Mr. McKeown provided. Mr. McKeown added that the ultimate decision whether the Review Committee would hear these issues as disputes would be between DFO Giesen and interim Chair Worl. Mr. Steponaitis asked for clarification of the role of the Review Committee to decide if an issue is a dispute. Ms. Mattix explained that the Review Committee is an advisory committee to the Secretary of the Interior, and in this instance the Secretary of the Interior did not wish further advice on the matter relating to the Hopi Tribe and Mesa Verde National Park. Ms. Mattix stated that the correspondence from the Assistant Secretary, Fish, Wildlife and Parks — speaking on behalf of the Secretary of the Interior — had effectively ended the issue of the Hopi Tribe and Mesa Verde National Park as a dispute.

Interim Chair Worl and DFO Giesen agreed to consult on whether the remaining two potential disputes would be heard by the Review Committee. Ms. Giesen stated she would confirm her availability for the September meeting dates. Ms. Worl requested that the Review Committee members be provided with all background information on these issues.

#### **Requests for Recommendations Regarding the Disposition of Culturally Unidentifiable Human Remains**

Ms. Graham explained that the requests listed on the agenda were for discussion of possible inclusion on the September meeting agenda. The institutions listed included the South Dakota Archaeological Research Center, Fort Collins Museum, the Office of State Archaeology at the University of Iowa, Colorado College, Virginia Department of Historical Resources, and Effigy Mounds National Monument. Two institutions have submitted a formal request, the South Dakota Archaeological Research Center and Effigy Mounds National Monument. Two institutions indicated they would be prepared to come before the Review Committee at the September meeting, Colorado College and Effigy Mounds National Monument.

Mr. Bailey asked about the institution that was unable to make their scheduled presentation at the St. Paul meeting due to scheduling changes. Ms. Graham stated that the South Dakota Archaeological Research Center had been proceeding with consultation as recommended by the Review Committee but indicated they would not be prepared to come before the Review Committee in September due to some recent inadvertent discoveries.

#### **Regulations**

Disposition of Unclaimed Cultural Items: Ms. Mudar summarized the consultation efforts for regulation 43 CFR 10.7, Disposition of unclaimed human remains, funerary objects, sacred objects, and objects of cultural patrimony, which will provide a disposition process for Native American cultural items and human remains found on or removed from Federal and tribal lands after November 16, 1990, that have not been claimed or cannot be claimed by a federally recognized Native American tribe or a Native Hawaiian organization. Since November 2003, the National NAGPRA Program has hosted four meetings with tribal representatives, and is in the process of planning an additional four meetings, to talk about the contents of the regulations. The National NAGPRA Program has also contacted nine professional museum and scientific organizations. Prior to the regulations being developed, a notice of the proposed regulations will be published in the Federal Register for public comment. This public comment will be considered during the process of developing draft regulations. Ms. Mudar stated she looked forward to working with the Review Committee members on this regulation and that discussion of this regulation would be included in the training session on September 16, 2004.

Disposition of Culturally Unidentifiable Human Remains: Mr. McKeown stated that under 43 CFR 10.11, Disposition of culturally unidentifiable human remains, the Review Committee is charged with recommending a process for the disposition of culturally unidentifiable human remains. The Review Committee made that recommendation at the Juneau, AK meeting in April 2000. A draft of the proposed rule was provided to the Review

Committee for comment at the Tulsa, OK meeting in May 2002 and at the Seattle, WA meeting in November 2002. The draft regulations were edited to incorporate the Review Committee's comments and are currently under review within the NPS.

Future Applicability: Mr. McKeown stated that under 43 CFR 10.13, Future applicability, the Review Committee is charged with recommending a process for recognition of a change in status of an institution or Native American group or the acquisition of new collections that result in eligibility under NAGPRA. Drafts of the proposed rule were provided to the Review Committee in 1996 and 2002. The draft regulations were edited to incorporate the Review Committee's comments and are currently under review within the NPS.

#### **Database of Culturally Unidentifiable Human Remains**

Ms. Murdock reported that the first phase of data entry for the database of culturally unidentifiable human remains is 99 percent complete, with entry of 586 out of 596 inventories. Of the entered inventories, 13 have skeletal information, and more than 85 percent have complete collection histories, site information, and accession information. Approximately 50 percent have been reviewed by NPS staff, and 35 have been verified by the submitting institution and are ready to be placed on the Internet. The entries encompass 111,000 human remains, including 2,627 human remains that have been transferred as recommended by the Review Committee and 489 human remains that have been affiliated. Information on these will remain in the database with a notation of their subsequent transfer or affiliation. Of the almost 20,000 sites represented, 7 percent represent records with unknown provenience.

#### **Other Items**

Prior to the teleconference, Review Committee members requested that two topics be placed on the September meeting agenda, the status of the Bishop Museum and its recognition as a Native Hawaiian organization and the implication of the 9<sup>th</sup> Circuit decision in *Bonnichsen versus US*. Although he had no objection to placing the item on the agenda, Mr. Steponaitis inquired about whether the Bishop Museum matter falls under the purview of the Review Committee. Mr. Monroe stated that whether or not the Review Committee has an official role in the determination regarding the status of the Bishop Museum, the matter warrants their attention. Ms. Worl stated that the Review Committee has the responsibility to be informed of issues such as this as it could be relevant in future disputes. Ms. Mattix confirmed that the matter may ultimately be relevant in future dispute issues, and therefore the Review Committee could raise this as a discussion topic.

During the teleconference, Mr. Bailey requested that the issue of the alleged possession of Geronimo's skull by the Skull and Bones Society at Yale be investigated and a report given to the Review Committee at the upcoming meeting. Ms. Worl asked for an assessment of the status of the National NAGPRA Program, in light of the year-long hiatus of Review Committee meetings, and an assessment of the recent National Congress of the American Indian (NCAI) resolution. Mr. Randy Jones agreed to address both the reorganization and the NCAI resolution at the September meeting. Mr. Monroe asked that a written statement regarding both of those issues be provided to the Review Committee prior to the September meeting, in order for the Review Committee members to be familiar with the issues.

#### **Review Committee's 2002-2003 Report to Congress**

Ms. Worl and Mr. Bailey stated that they would prepare a draft 2002-2003 report to Congress for review at the September Review Committee meeting.

#### **Review Committee Nominations of a Seventh Member**

Mr. McKeown stated that although her term on the Review Committee had expired, Ms. Metcalf has agreed to continue her service on the Review Committee pending completion of the nomination and selection process. In order to fill the position, the other six members of the Review Committee will need to compile a list of names for consideration by the Secretary of the Interior. The Secretary will make the final selection from the list.

## **Public Comment**

Mr. Terry Morgart, Hopi Tribe, stated that he was honored to address the Review Committee. Mr. Morgart explained that in May 1999 at the Silver Spring, MD meeting, the Review Committee heard the Hopi Tribe's dispute with the cultural affiliation determination in the notice submitted by Chaco Culture National Historical Park. At its Salt Lake City meeting in November 1999, the Review Committee made its findings and recommendations, which were published in the Federal Register on February 10, 2000, that Chaco Culture National Historical Park withdraw its published notice and reassess the cultural affiliation determination. The NPS Intermountain Regional Director and NPS Director declined to accept the Review Committee's findings and recommendations. This action was the subject of former Chairman Martin Sullivan's testimony before the Senate Committee on Indian Affairs on July 25, 2000, and was the first instance in which a party to a NAGPRA dispute declined to accept the Review Committee's findings. The Hopi Tribe also disputed the notices of cultural affiliation determinations by Mesa Verde National Park and Aztec Ruins National Monument.

In 2000, NPS Director Stanton ordered a National Park System Advisory Board review of NPS cultural affiliation determinations. Although the Advisory Board's recommendations did not specifically address the Hopi Tribe's concerns, the Hopi Tribe supported the Advisory Board's recommendations since they generally support the Review Committee's findings and recommendations. The Hopi Tribe provided documentation to the Review Committee summarizing the current status of the dispute. An April 1, 2004 letter from Secretary Manson to DFO Giesen requested that the Review Committee not consider the previously accepted dispute between the Hopi Tribe and Mesa Verde National Park, and Secretary Manson offered to meet with the Review Committee. The Hopi Tribe requested that the Review Committee meet with Dr. Giesen and Assistant Secretary Manson to reinstate the previously accepted hearing of the dispute. Mr. Morgart requested that the Review Committee place this item on the agenda of a meeting to be held at a location that will not place an undue financial burden on the Hopi Tribe. The Hopi Tribe requested that Secretary Norton reconsider Assistant Secretary Manson's responses and uphold the Review Committee's findings and recommendations. The Hopi Tribe believes that the Review Committee's findings and recommendations should receive deference by Federal agencies and museums, otherwise the Hopi Tribe will proceed under Section 15, Enforcement. The Hopi Tribe is prepared to present their dispute with Mesa Verde National Park at the September 2004 meeting. Ms. Worl stated the Review Committee would review this issue in order to make a determination.

Mr. Kunani Nihipali, Hui Malama I Na Kupuna O Hawai'i Nei, addressed the Kawaihae Caves issue, heard by the Review Committee at the St. Paul, MN meeting in May 2003. Mr. Nihipali stated that the Review Committee lacked jurisdiction over the Kawaihae Caves cultural items because repatriation was completed in that case. NAGPRA does not allow for third parties to reopen a case following completion of all NAGPRA requirements, as was pointed out in the minority opinion of the Review Committee's findings and recommendations. Since the Review Committee did not have jurisdiction in this matter, their findings and recommendations are nonbinding on the parties and do not carry enforcement authority. The Office of the Inspector General of the DOI is treating the Review Committee's findings and recommendations as having binding authority and initiated an investigation against Hui Malama I Na Kupuna O Hawai'i Nei to reopen the case and return the items to the Bishop Museum. Hui Malama I Na Kupuna O Hawai'i Nei is one of the lawful owners of the cultural items and this action could result in the repatriated moi pu being redisturbed by Federal officials.

Mr. Nihipali requested that the NPS address a number of issues, including the authority under which the issue was heard by the Review Committee, who in NPS authorized the action, how can NPS lawfully exercise authority over Hawaiian cultural items owned by 13 Native Hawaiian organizations, at which point in the process is a repatriation complete, why didn't the NPS provide for the presence of all 13 Native Hawaiian organizations claiming ownership of the cultural items, and what is the potential liability of the Review Committee members or any of the 13 Native Hawaiian organizations in the event that the repatriated cultural items are disturbed. Hui Malama I Na Kupuna O Hawai'i Nei asks that the Review Committee reconsider the matter, rescind their recommendations to reopen the Kawaihae matter, and revert to the minority opinion as the recommendation to consider, specifically the last paragraph, "The minority opinion is that the Bishop Museum is no longer a party in any dispute among the claimants as to the final resting place of the human remains and funerary objects. Whether the Review Committee may now assist the 13 claimants in resolving the dispute among them is a separate matter."

Ms. Ho'oipo Pa, Ke Kia'i, stated that the Kawaihae Caves matter is being used to justify the Bishop Museum's actions towards Hui Malama I Na Kupuna O Hawai'i Nei in other matters, specifically that the Bishop Museum now does not have to repatriate to Hui Malama I Na Kupuna O Hawai'i Nei in the Molokai moi pu matter. Ms. Pa added

that the NCAI resolution is of particular importance to Native Hawaiian organizations and specifically addresses some of the issues experienced by Native Hawaiian organizations.

Mr. Guy Kaulukukui, Hui Malama I Na Kupuna O Hawai'i Nei, thanked the Review Committee members for agreeing to discuss the Bishop Museum's new NAGPRA guidelines at the September meeting, and he stated that the guideline trivializes the law and the role of Native peoples under the law.

Ms. Worl stated the Review Committee would consider the issues raised by Mr. Nihipali, Ms. Pa, and Mr. Kaulukukui.

Ms. Bambi Kraus, National Association of Tribal Historic Preservation Officers, offered greetings to the Review Committee members and commended the NPS for taking strong steps to rejuvenate the National NAGPRA Program. She expressed concern about funding committed to NAGPRA implementation and asked for information on the ramifications of the year-long meeting hiatus on National NAGPRA Program funding.

Ms. Sonia Tamez, U.S. Forest Service, extended appreciation for the invitation to participate in the teleconference.

Mr. Richard Hitchcock, Phoebe Hearst Museum at the University of California, welcomed the new Review Committee members and expressed thanks for the invitation to participate in the teleconference.

Mr. Lance Foster, Office of Hawaiian Affairs, thanked the Review Committee for committing to hear the concerns expressed by the Native Hawaiian organizations at the September meeting.

### **Closing Remarks**

Ms. Worl requested that a summary of National NAGPRA Program funding be included in the Review Committee information for the September meeting. Ms. Worl expressed appreciation for the willingness of the Review Committee members to work on NAGPRA implementation, for the presence of the NPS Deputy Director and NPS Associate Director, Cultural Resources, during the teleconference, and for the addition of Ms. Hutt as Team Leader of the National NAGPRA Program. Ms. Worl requested that the Review Committee members be provided with informational updates on NAGPRA implementation as soon as possible, in order for the Review Committee members to be fully informed and prepared for the September meeting.

### **Meeting Adjournment**

The meeting adjourned at 4:20 p.m. e.d.s.t., on Monday, July 19, 2004.

Certified –

/s/ Mr. Timothy McKeown,  
Program Officer National NAGPRA Program  
Designated Federal Officer, Native American Graves Protection  
and Repatriation Review Committee

Date September 18, 2004

Approved on behalf of the Review Committee –

/s/ Ms. Rosita Worl  
Interim Chair, Native American Graves Protection  
and Repatriation Review Committee

Date September 18, 2004